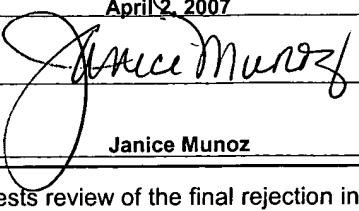
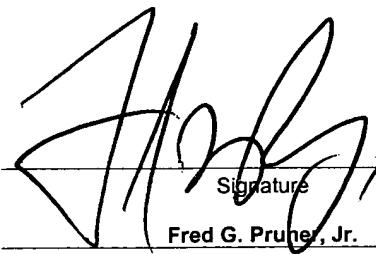


Doc. Code: AP.PRE.REQ

PTO/SB/33 (07/05)

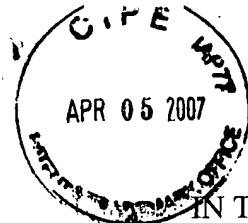
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 22.1489 (SHL.0293US)
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR		Application Number 10/043,856
on <u>April 2, 2007</u>	Filed 01/11/2002	
Signature 	First Named Inventor Jean-Luc Pous	
Typed or printed name <u>Janice Munoz</u>	Art Unit 3625	Examiner Nicholas D. Rosen
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
<p>I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>40,779</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p> Signature Fred G. Pruner, Jr. Typed or printed name</p> <p><u>(713) 468-8880</u> Telephone number</p> <p><u>April 2, 2007</u> Date</p>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		

*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicants: Jean-Luc Pous et al. § Art Unit: 3625
Serial No.: 10/043,856 §
Filed: January 11, 2002 § Examiner: Nicholas D. Rosen
Title: Custom Engineered § Docket No. 22.1489
Product System And § (SHL.0293US)
Process §

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant seeks pre-appeal review of the § 103 rejections of claims 38 and 42-62.

Regarding the § 103 rejections, the Examiner concedes that neither EMCORE nor House discloses via an unavailable product/attribute selector, using selections of unavailable products as market research. Office Action, 3 and 13. Thus, a *prima facie* case of obviousness has not been established for any of the claims for at least the reason that the hypothetical combination of House and EMCORE fails to teach or suggest all claim limitations. More specifically, the Examiner appears to rely on House for the general teaching of a product selector and rely on EMCORE for the teaching of expanding a product line based on market research. However, neither reference, alone or in combination, teaches or suggests expanding a product line based on selection of an unavailable product by a product/attribute selector. Without the disclosure of the missing elements, a *prima facie* case of obviousness has not been established for any of the claims.

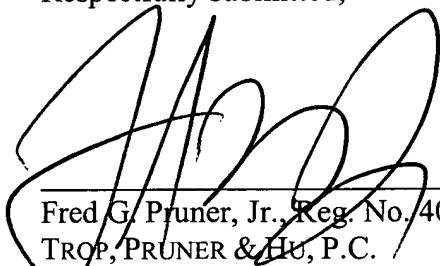
Date of Deposit: April 2, 2007
I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Janice Munoz

The Examiner refers to *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988) for the purported authority for relying on the general level of skill in the art to establish a *prima facie* case of obviousness. However, in *In re Fine*, the Federal Circuit held that the Examiner had *failed* to establish a *prima facie* case of obviousness for the reason that the Examiner failed to show where the prior art taught or suggested all claim limitations. Rarely, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment. *Al-Site Corp. v. VSI Int'l, Inc.*, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999). Thus, the Examiner must show that one skilled in the art, *without knowledge of the claimed invention*, would have derived the claimed invention in view of the EMCORE reference and House. Objective evidence is required, as mere speculation by the Examiner is not sufficient to establish a *prima facie* case of obviousness. *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

Therefore, for at least the following reasons, withdrawal of the § 103 rejections of claims 42-55 is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (SHL.0293US).

Respectfully submitted,



Fred G. Pruner, Jr., Reg. No. 40,779
TROP, PRUNER & HU, P.C.
1616 S. VOSS ROAD, SUITE 750
HOUSTON, TEXAS 77057
713/468-8880 [Phone]
713/468-8883 [Fax]

Date: April 2, 2007